

ITEL

IteI Rail Corporation

55 Francisco
San Francisco, California 94133
(415) 984-4000
Telex 34234

RECORDATION NO. 9756-B

May 3, 1985

MAY 31 1985 3 12 PM
INTERSTATE COMMERCE COMMISSION

No.

5-151A022

Date MAY 31 1985

Fee \$ 10.00

Honorable James H. Bayne, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

ICC Washington, D. C.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of IteI Rail Corporation for filing and recordation under the Lease Agreement dated as of April 26, 1978 between IteI Corporation, Rail Division as predecessor in interest to IteI Rail Corporation and East Camden and Highland Railroad Company which was filed with the I.C.C. on October 11, 1978 and given I.C.C. Recordation No. 9756, four counterparts of the following document:

Amendment No.12 dated March 26, 1985 to the Lease Agreement dated April 26, 1978 between IteI Corporation, Rail Division and East Camden and Highland Railroad Company.

The names and addresses of the parties to the aforementioned are:

1. East Camden and Highland Railroad Company (Lessee)
P.O. Box 3180
East Camden, Arkansas 71701
2. IteI Rail Corporation (Lessor)
55 Francisco, 5th Floor
San Francisco, California 94133

The equipment covered by this Amendment is one hundred (100) boxcars bearing reporting marks within the Series EACH 2000-2161.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

we think
this one is

9756-B

Handwritten signature: Charles H. Bayne

Handwritten initials: JCC

Mr. James H. Bayne, Secretary
May 3, 1985
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this document.

Sincerely,

A handwritten signature in cursive script, reading "Denise M. Bottarini".

Denise M. Bottarini
Legal Assistant

DMB/vdv/#2-25

cc: Robert S. Clark
J. Michael Kelly, Esq.
Virginia Hanger.

Interstate Commerce Commission
Washington, D.C. 20423

5/31/85

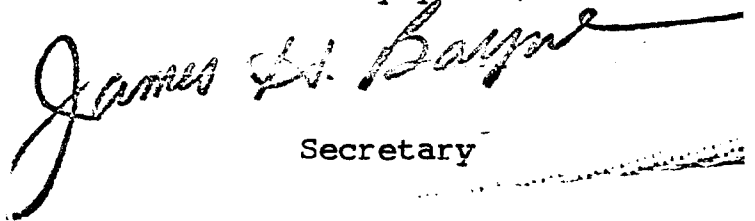
OFFICE OF THE SECRETARY

Denise M. Bottarini
Itel Rail Corp.
55 Francisco
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/31/85 at 2:20pm and assigned re-recording number(s). 9756-Q & 13073-D

Sincerely yours,


Secretary

Enclosure(s)

04/04/75

RECORDATION NO. 9756-9 Filed 1425

MAY 31 1985 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 12

THIS AMENDMENT NO. 12 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of April 26, 1978, between Itel Corporation, Rail Division and EAST CAMDEN AND HIGHLAND RAILROAD COMPANY ("Lessee") is made as of the 26th day of March, 1985, by and between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division ("Itel Rail") and Lessee.

R E C I T A L S

- A. Itel Rail and Lessee are parties to the Agreement, pursuant to which five hundred (500) boxcars bearing the reporting marks EACH 2001-2200, EACH 2351-2500, EACH 4001-4150 (the "Cars") have been leased and delivered by Itel Rail to Lessee.
- B. The Cars bearing the reporting marks EACH 2421, EACH 4006, EACH 4078, EACH 4086 and EACH 4105 were destroyed on or about March 20, 1981; May 18, 1980; May 18, 1980; May 18, 1980; and September 6, 1983, respectively.
- C. Itel Rail and Lessee desire to accurately reflect the inside dimensions of the Cars.
- D. Itel Rail and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of the Cars for a period of time to improve the utilization of and revenue from the Cars.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
- 2. Equipment Schedules No. 1A, 3A and 8A, attached to and incorporated into the Agreement, shall be replaced in their entirety by Equipment Schedules 1B, 3B and 8B, attached hereto.
- 3. Itel Rail consents to Lessee's entering into a sublease agreement (the "Sublease") with Hartford and Slocomb Railroad Company ("Sublessee") dated as of March 26, 1985, for one hundred (100) Cars bearing reporting marks within the series EACH 2001-2161 (the "Boxcar(s)") for a period of time to improve the utilization of and revenue from the Boxcars. Itel Rail's consent and consent for the sublease of any Cars on any Equipment

Schedules that may be added to the Sublease by mutual consent of the parties is hereby specifically conditioned upon the following: (a) Lessee's agreement that Lessee shall remain primarily responsible for the payment of rent set forth in the Agreement and for the performance of all the other terms of the Agreement to be performed by the Lessee; and (b) Lessee's agreement that the Sublease is subject and subordinate to the rights of Itel Rail under the Agreement and any modification or amendment thereof; and (c) Itel Rail is deemed to be a third party beneficiary of the Sublease and is granted all rights of Lessee (including all rights to collect Revenues and to enforce the terms and conditions) under the Sublease but is not subject to any of the Lessee's obligations thereunder.

4. The term of the Sublease with respect to each Boxcar shall commence at 12:01 P.M. on the date and at the location that such Boxcar is remarked with the Sublessee's reporting marks and shall continue as to all the Boxcars described on each Schedule for five (5) years from the date on which the first Boxcar on such Schedule was remarked ("Initial Sublease Period"). Upon expiration of the Sublease, the Sublease shall be automatically extended for not more than five (5) consecutive periods of twelve (12) months each (each twelve (12) month period an "Extended Sublease Period") with respect to all of the Boxcars subject to the Sublease, provided, however, that Lessee or Sublessee may terminate the Sublease at the end of the Initial Sublease Period or any Extended Sublease Period as to all, but not fewer than all, of the Boxcars by written notice delivered to the other not less than six (6) months prior to the end of the Initial Sublease Period or any Extended Sublease Period. Lessee agrees that, upon Itel Rail's request, it shall terminate the Sublease at the earliest possible termination opportunity and that it shall not terminate the Sublease without Itel Rail's consent.
5. The initial remarking and final remarking of the Boxcars pursuant to the Sublease shall be at Itel Rail's expense. Itel Rail shall also be responsible for all transportation costs related to the initial delivery of the Boxcars to Sublessee's line. Concurrent with any restencilling at the commencement, expiration or early termination of the Sublease, the parties hereto shall execute a Certificate of Remarking (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks for each Boxcar remarked pursuant to the Sublease. Such Certificate of Remarking shall become attached to and incorporated into this Amendment.
6. During the Initial Sublease Period and any Extended Sublease Period only, a new Subsection 3.D. shall be added solely with respect to the Boxcars:
 - "D. Upon Lessor's request, Lessee shall, from time to time, make the Boxcars available for use by other railroads. Lessee shall at no time enter into an assignment agreement with respect to the Boxcars without receiving Lessor's prior written consent."

7. During the Initial Sublease Period and any Extended Sublease Period only, a new Subsection 5.E. shall be added solely with respect to the Boxcars:

"E. Itel Rail may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Itel Rail shall assume full responsibility for all expenses including legal fees, resulting from such contest."

8. During the Initial Sublease Period or any Extended Sublease Period only, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following solely with respect to the Boxcars:

"6. Rent

A. Definitions

- (i) 'Revenues' is defined as the total revenues earned and due from railroad companies other than Hartford and Slocomb Railroad Company (the "Sublessee") for the use or handling of the Boxcars, including but not limited to, per diem and mileage, whether or not collected and received by Itel Rail and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Itel Rail's request, reimburse Itel Rail for such amounts.
- (ii) The 'Utilization Rate' of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars were on sublease to Sublessee, commencing from the Initial Loading.
- (iii) The 'Base Rent' is defined as the sum equal to the Revenues which the Boxcars would have earned in the aggregate at a Utilization Rate of ninety percent (90%).

- B. Itel Rail shall receive all Revenues earned by each Boxcar prior to its Initial Loading. Each Boxcar delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 6.C. upon the Initial Loading of such Boxcar.

- C. Lessee agrees to pay the following rent to Itel Rail for the use of the Boxcars:

- (i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the Base Rent, Itel Rail shall retain a sum equal to one hundred percent (100%) of the total Revenues.

- (ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rent, Itel Rail shall retain an amount equal to the Base Rent and Sublessee shall receive all Revenues received in excess of the Base Rent.
- D. The calculations required in Subsection 6.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Itel Rail to meet its financial commitments, Itel Rail shall, prior to making such calculations, retain the Revenues received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 6.C., Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- E. If, with respect to any calendar quarter, actual Revenues are less than the Base Rent, Itel Rail may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Boxcars as Itel Rail shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Itel Rail, void such termination notice by paying to Itel Rail an amount equal to the difference between actual Revenues for such calendar quarter and the Base Rent for such calendar quarter.
- F. If, subsequent to the Initial Loading, any Boxcar remains on Sublessee's railroad lines for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate the Agreement as to such Boxcar and take possession of such Boxcar on Sublessee's railroad tracks. If any such Boxcar has remained on Sublessee's railroad tracks for more than seven (7) consecutive days because Sublessee has not given preference to the Boxcars as specified in Subsection 3.B., Lessee shall be liable for and remit to Itel Rail an amount equal to the Revenues which would have been generated if such Boxcar had been in the physical possession and use of another railroad for the entire period during which such Boxcar is on Sublessee's railroad line.

- G. In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the rental calculations of the Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Itel Rail may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Itel Rail to Lessee and to Sublessee.
- H. If any Boxcar, while in the possession of Lessee or Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Boxcar, Lessee shall notify Itel Rail within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Itel Rail within sixty (60) days of the Damage Date, Itel Rail has the right to engage an independent appraiser to inspect such Boxcar to determine the extent of such damage. Regardless of whether or not Lessor has notified Itel Rail of the damage pursuant to this Subsection, Lessee shall remit to Itel Rail an amount equal to the DV of such Boxcar within thirty (30) days of receipt of an invoice from Itel Rail.
- I. Any agreement between Lessee or Sublessee and other parties with respect to the Boxcars ("Third Party Agreement(s)") shall be void without Itel Rail's prior written approval of the conditions contained therein if such Third Party Agreement affects the Revenues earned by the Boxcars, provided, however, that this shall in no event prevent or prohibit Lessee or Sublessee from fulfilling their obligations to provide transportation and facilities upon reasonable request therefor.
- J. Itel Rail and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Boxcars, provided, however, that this shall not affect their respective obligations under this Section 6."

Upon the expiration or termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Boxcars.

8. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement, including the Boxcars.

9. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By: JD Hayes

Title: President

Date: May 2, 1985

EAST CAMDEN AND HIGHLAND RAILROAD
COMPANY

By: Don E. Gent

Title: PRESIDENT

Date: APRIL 12 1985

EXHIBIT A
CERTIFICATE OF REMARKING

<u>Old EACH Boxcar Marks</u>	<u>New HS Boxcar Marks (at commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New EACH Boxcar Marks (pursuant to expiration of Sublease)</u>	<u>Da Rem</u>
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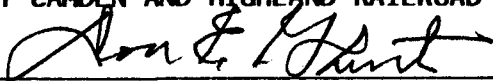
ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EAST CAMDEN AND HIGHLAND RAILROAD COMPANY

By: 

Title: PRESIDENT

Date: APRIL 12 1985

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 2nd day of May, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Bunny E. Hanger
Notary Public

STATE OF ARKANSAS)
) ss:
COUNTY OF OUACHITA)

On this 12th day of APRIL, 1985, before me personally appeared DON E. GHENT, to me personally known, who being by me duly sworn says that such person is PRESIDENT of East Camden and Highland Railroad Company, that the foregoing Amendment No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires Nov. 29, 1992
Sarah A. Derrick
Notary Public

EQUIPMENT SCHEDULE NO. 8B

Itel Rail Corporation hereby leases the following Cars to East Camden and Highland Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 26, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	
				Inside Width	Height		
XP	60' General Purpose, Boxcar, Plate C, End of Car Cushioning, Nailable Steel Floors, 100 Ton Trucks	EACH 4001- 4005, 4007- 4077, 4079- 4085, 4087- 4100	60'10"	9'6"	11'0"	12' Plug	
XM	60' General Purpose, Boxcar, Plate C, End of Car Cushioning, Nailable Steel Floors, 100 Ton Trucks	EACH 4101- 4104, 4106- 4150	60'10"	9'6"	11'0"	12' Plug	

ITEL RAIL CORPORATION

By: *D. Hayes*

Title: *President*

Date: *5-2-85*

EAST CAMDEN AND HIGHLAND
RAILROAD COMPANY

By: *Don E. Hunt*

Title: *President*

Date: *4-12-85*

EQUIPMENT SCHEDULE NO. 3B

Itel Rail Corporation hereby leases the following Cars to East Camden and Highland Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 26, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors	C
				Inside Width	Height		
XM	50' General Purpose, Boxcar, Plate C, End of Car Cushioning, Nailable Steel Floors	EACH 2351- 2420, 2422- 2500	50'6"	9'6"	11'1"	12' Plug	1

ITEL RAIL CORPORATION

By: *[Signature]*
Title: President
Date: 5-2-85

EAST CAMDEN AND HIGHLAND
RAILROAD COMPANY

By: *[Signature]*
Title: President
Date: 4-12-85

EQUIPMENT SCHEDULE NO. 1B

Itel Rail Corporation hereby leases the following Cars to East Camden and Highland Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 26, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors	
				Inside Width	Height		
XM	50' General Purpose, Boxcar, Plate C, End of Car Cushioning, Nailable Steel Floors	EACH 2001- 2200	50'6"	9'6"	11'1"	10' Sliding	2

ITEL RAIL CORPORATION

By: DD Hayes
Title: President
Date: 5-2-85

EAST CAMDEN AND HIGHLAND
RAILROAD COMPANY

By: Don E. Gent
Title: President
Date: 4-12-85

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 2nd day of May, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedules No. 1B, 3B and 8B were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Bunny E. Hanger
Notary Public

STATE OF ARKANSAS)
) ss:
COUNTY OF OUACHITA)

On this 12th day of APRIL, 1985, before me personally appeared DON E. GHENT, to me personally known, who being by me duly sworn says that such person is PRESIDENT of East Camden and Highland Railroad Company, that the foregoing Equipment Schedules No. 1B, 3B and 8B were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires Nov. 29, 1992

Sarah L. Derrick
Notary Public